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28 SEP 2006

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In re Application of : DECISION ON  
Sailor et al :  
Application No.: 10/589,741 :  
PCT No.: PCT/US2004/042997 :  
Int. Filing Date: 21 December 2004 : PETITION UNDER  
Priority Date: 22 December 2003 :  
Attorney's Docket No.: 0321.68812 :  
For: OPTICALLY ENCODED PARTICLES WITH :  
GREY SCALE SPECTRA : 37 CFR 1.137(b)

This decision is in response to applicants' "PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. 1.137(b)," filed on 16 August 2006. The required fee of \$65.00 (the surcharge under 1.492(h) for late filing of the executed declaration) has been charged to Deposit Account No. 07-2069.

**BACKGROUND**

On 21 December 2004, this international application was filed, claiming an earliest priority date of 22 December 2003.

The deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 22 June 2006. This international application became abandoned with respect to the United States at midnight on 22 June 2006 for failure to pay the required basic national fee.

On 16 August 2006, applicants filed the instant petition under 37 CFR 1.137(b) and Transmittal letter for entry into the national stage in the United States, which was accompanied by the basic national fee and the petition fee.

**DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

- The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

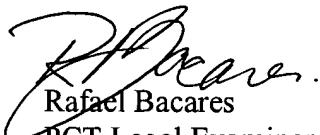
Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

### **DECISION**

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing. The 35 USC 371(c)(1), (c)(2), and (c)(4) date of this application is **16 August 2006**.



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